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June 15, 2023

VIA ECF

Judge Honorable Kiyo A. Matsumoto
United States District Court
Eastern District of New York
224 Cadman Plaza East
Brooklyn, New York 11201

**Re: 1567 56th Street, LLC, 1569 56th Street, LLC, and Shlomo Braun v.
Arthur Spitzer, et al**

Docket No.: : 22-cv-04873

Dear Judge Matsumoto:

We represent Defendants, Dekel Abstract, Abraham Teitelbaum, and Jehuda Weisz ("the Dekel Defendants"), with regard to the above-referenced matter. Pursuant to Your Honor's part rules the Dekel Defendants respectfully request a pre-motion conference in advance of filing a motion to dismiss and/or strike Plaintiff's Second Amended Complaint (ECF #47).

Plaintiff filed a Second Amended Complaint on Friday June 9, 2023, without the consent of the Dekel Defendants, or any of the other non-defaulting Defendants; without leave of the Court, and in disregard of the Court's directives regarding motion practice. In addition, all of the non-defaulting Defendants served motions to dismiss Plaintiff's First Amended Complaint and the Plaintiff has not served any opposition papers to said motions. As such, the Dekel Defendants seek dismissal pursuant to Federal Rule of Civil Procedure 15(a).

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June 15, 2023

Page 2

The Complaint Should Be Dismissed Pursuant To Federal Rule of Civil Procedure 15(a)

Federal Rule of Civil Procedure 15(a)(1) states in pertinent part: “*Amending as a Matter of Course*. A party may amend its pleading *once* as a matter of course within (A) 21 days after serving it; or (B) if the pleading is one to which a responsive pleading is required . . . 21 days after service of a motion under Rule 12(b) . . .” (emphasis added.) Or otherwise, amendment of pleadings before trial is governed by Fed. R. Civ. Pro. 15(a)(2), which provides in pertinent part: “(2) *Other Amendments*. In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.”

In *Bizouati v. City of New York*, the Court found that the Plaintiff had no right to file a Second Amended Complaint when she filed a second amended complaint without filing a motion for leave to amend. *Bizouati v. City of NY*, 2008 US Dist LEXIS 21769, at *6 [EDNY Mar. 19, 2008, No. CV 2005-4133 (RJD)(MDG)]. Additionally, in *Deutsch v. Health Ins. Plan*, the Court stated “the automatic amended provisions of 15(a) do not apply to amendments of amended pleadings. The drafters of the Federal Rules precluded any suggestions to the contrary by providing in 15(a) that ‘[a] party may amend his pleadings once as a matter of course.’ *Deutsch v. Health Ins. Plan*, 573 F. Supp. 1443, 1445 (S.D.N.Y. Oct. 28, 1983). *See also Nwachukwu v. Liberty Bank*, 2016 U.S. Dist. LEXIS 85896, *2 (D. Conn. July 1, 2016) (“Put simply, a pleading may not be amended ‘as a matter of course’ a second time.”

Based upon the foregoing, the Dekel Defendants respectfully seek to strike the Plaintiff’s Second Amended Complaint pursuant to Rule 15(a) and the scheduling of a pre-motion conference at the Court’s convenience. The Dekel Defendants propose that its motion be filed 30 days after the pre-motion conference, and Plaintiff’s to serve their opposition within 14 days. Additionally, the Dekel Defendants propose to file the reply papers 20 days after the opposition is due.

Respectfully Submitted,

**MARKS, O'NEILL, O'BRIEN,
DOHERTY & KELLY, P.C.**

/s/ Kaitlyn P. Long
Kaitlyn P. Long

KPL